Bally's Park Place, Inc. *and* Sports Arena Employees Union, Local 137, AFL–CIO, Petitioner. Case 4–RC–15056

December 8, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on June 8, 1982,[1] and the Regional Director's report, pertinent parts of which are attached hereto as an appendix, recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs,[2] and hereby adopts the Regional Director's findings,[3] as modified herein, and recommendations.

1. In his report, in reciting the facts prior to overruling allegations of objectionable electioneering contained in Employer Objections 1 and 2, the Regional Director found that "[b]efore opening the polls, the Board Agents indicated that no electioneering would be permitted in the polling area." In its memorandum in support of exceptions, the Employer asserts that "contrary to the suggestions in the Regional Director's Report, there was not a clear area designated as a 'no electioneering' area." The Employer contends that "a more plausible delineation of the 'no electioneering' area would have been that the entire restaurant level was barred from such activity." For purposes of review, we accept as fact that there was no specific no-electioneering area clearly designated by the Board agent; however, we find no merit in the Employer's further contention in this regard.

Absent designation of a specific no-electioneering area by the Board agent,[4] the area "at or near the polls" is the area for which the Board applies strict rules against electioneering.[5] See *Milchem, Inc.*, 170 NLRB 362 (1968); *Claussen Baking Company*, 134 NLRB 111 (1964). The standard form "Notice of Election" used in the instant case, as provided by Regional Offices for posting before elections, states: "Electioneering will not be permitted at or near the polling place." Thus, assuming the lack of "clear" designation of a no-electioneering area herein, we find the no-electioneering area in this case to have been the customary area "at or near the polls."

We note particularly that 130 feet from the entrance to the polling place is the closest any Employer witness places the union representatives alleged to have engaged in electioneering. Further, the location where the union representatives were allegedly seen, on the same level as the polling place, was a public restaurant area which, as appears from a diagram provided by the Employer, did not even provide a line of sight to the entrance to the polling place—which was in fact the farthest room in a separate area of private banquet rooms.

Accordingly, having considered the Employer's evidence in support of its exceptions, and Respondent's factual assertions in its memorandum, we find, in accord with the Regional Director's recommendation, that the alleged conduct did not violate the *Milchem* rule, because the statements that were made were not made to voters in the polling place or while waiting in line to vote, nor was the conduct otherwise of a nature to warrant an inference that it interfered with the exercise of employee free choice.[6] *Boston Insulated Wire & Cable Co., supra.*

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 354 for, and 179 against, the Petitioner, with 1 void ballot; there were 13 challenged ballots, an insufficient number to affect the results.

[2] After filing its exceptions and memorandum in support thereof, the Employer filed a supplemental memorandum which contained a request for oral argument on issues arising from the Petitioner's conduct occurring after the election, as described in said memorandum. We have considered the Employer's supplemental memorandum and, as we find that the circumstances described therein do not raise issues which warrant oral argument, we hereby deny the Employer's request. Further, we find that the conduct asserted to have been engaged in by the Petitioner after the election would not warrant consideration as conduct which could have affected the results of the election.

[3] In adopting the Regional Director's recommendation to overrule the Employer's Objection 5, alleging material misrepresentations of fact, Member Fanning does not rely on *Midland National Life Insurance Company*, 263 NLRB 127 (1982), in which he dissented, but reaches the same conclusion under the standards of *Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962).

[4] We have held that the establishment of an area in which electioneering is not permitted must in the first instance be left to the informed judgment of the regional director and agents conducting the election. *Marvil International Security Service Inc.*, 173 NLRB 1260 (1968). In that case, we rejected the employer's contention that the no-electioneering area was too narrowly drawn. In this case as well, we perceive no basis for finding that a traditional "no-electioneering" area confined to the immediate vicinity of the polls was improper.

[5] Even when electioneering occurs "at or near the polls," the Board considers a number of additional factors to determine whether the conduct is objectionable, such as the extent and nature of the alleged electioneering, whether it was conducted by a party to the election or by employees, whether a no-electioneering area had been designated and conduct occurred within the area, and whether conduct occurred or continued contrary to the instructions of the Board agent. See *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1119 (1982).

[6] We find the facts of *Detroit Creamery Company, Artic Ice Cream Plant*, 60 NLRB 178 (1945), cited by the Employer, to be distinguishable from the facts herein, at least insofar as the union representatives here were seen standing in an extensive public area. Moreover, we note that the value of *Detroit Creamery* as precedent was substantially limited by our decision in *Milchem, Inc., supra*, where *Detroit Creamery* was listed as one of several cases which failed to present a clear standard for evaluating the effect of conversations between parties and prospective voters in an election.

We therefore adopt the Regional Director's recommendation to overrule Objections 1 and 2.

2. The Regional Director found that the Employer's evidence in support of Objection 7—alleging that supervisors coerced and otherwise influenced employees under their supervision to vote for the Union—did not warrant overturning the results of the election. We agree with the Regional Director's conclusion and adopt his factual findings and recommendation to overrule the objection. However, in concluding that the Employer's evidence did not provide a reasonable basis for finding or inferring coercive effects on the employees,[7] we find additional support in the following facts and circumstances, derived from the evidence supplied by the Employer: (1) the alleged objectionable supervisory activity was limited to oral remarks made to or in the presence of employees; (2) the remarks were not patently coercive or threatening, nor was there anything in them implying retaliation for voting against the Union; instead, the remarks appeared to express the speakers' personal views about unionization; (3) the supervisors who made the remarks were low in the supervisory hierarchy; (4) several of the supervisors' statements were made in the presence of other supervisors, two of whom provided evidence submitted by the Employer with its memorandum; and (5) one supervisor's remarks supportive of unionization were apparently uttered in response to contrary remarks by another supervisor during a discussion involving several employees and both supervisors.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Sports Arena Employees Union, Local 137, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full time dealers, and part time dealers who during the 13 weeks prior to May 9, 1982, or date of hire if sooner, have worked an average of 18 hours or more per week, employed by Bally's Park Place, Inc., at its Atlantic City, New Jersey location; but excluding all other employees, security employees and guards, seasonal employees, floor persons, pit bosses, box persons, and all other supervisors as defined in the Act.

APPENDIX

Objections Nos. 1 and 2 Inasmuch as both of these objections involve allegations of electioneering by Petitioner's agent during the election, they will be treated together. The election was conducted in the Tivoli Meeting Room on the restaurant level at the Employer's Atlantic City, New Jersey casino. Before opening the polls, the Board Agents indicated that no electioneering would be permitted in the polling area. Employees were released to vote by a Board Agent and an observer from each of the parties, who left the polling place together and descended one level to the casino floor, where the release of voters was coordinated with a relief crew of employees who substituted for those going to vote.

The Employer submitted evidence of three incidents of alleged electioneering. One employee stated that, sometime during the first three hours of voting, as a group of employees was being escorted to the polls, an unidentified man dressed in a business suit, who was not wearing an employee badge, was standing near Sundaes, an ice cream parlor located at least 130 feet from the polling place. As the group passed Sundaes, this individual repeated several times that the employees should "vote yes." At about this time, according to another employee, an individual answering the same description was observed telling employees on the casino floor to vote yes. A third employee stated that a similarly dressed individual, standing at the top of the escalators on the same floor as the voting area, urged a group of employees on their way to vote to "vote union if you want things to be good." One of the Board Agent's conducting the election was informed of the electioneering shortly after the incidents described above. The Agent spoke with an attorney for the Petitioner, who cautioned the individual against improper electioneering. There is no evidence of any further electioneering following the report of the alleged incidents to the Petitioner's counsel. The Employer also presented evidence that several representatives of the Petitioner stood or sat in the vicinity of the top of the escalators or Sundaes during the election and observed many of the unit employees on their way to vote. The Petitioner's representatives admit that they were on the casino floor and in Sundaes, during the election, but they deny making any of the statements attributed to them.

While electioneering is generally prohibited at or near the polls, there is no rule otherwise prohibiting electioneering elsewhere on the Employer's premises during the election. Cf. *Milchem, Inc.*, 170 NLRB 362. As the Board has stated: "it is unrealistic to expect parties or employees to refrain totally from any and all types of electioneering in the vicinity of the polls." *Boston Insulated Wire & Cable Co.*, 259 NLRB No. 149 sl. op. p. 4. The electioneering involved in the instant case occurred away from the polling place, outside the area designated as the no-electioneering area, and was not directed at employees waiting in a line to vote. *Boston Insulated Wire & Cable Co., supra; Cabs Housekeeper Service, Inc.*, 241

[7] See *Gary Aircraft Corporation*, 220 NLRB 187 (1975); *Turner's Express, Incorporated*, 189 NLRB 106 (1971); *Stevenson Equipment Company*, 174 NLRB 865 (1969).

NLRB 1259 (1979); *Marvil International Security Service, Inc.*, 173 NLRB 1260 (1978). Accordingly, I shall recommend that Objections 1 and 2 be overruled.

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Objection 7 In support of this objection, the Employer presented evidence that at least one pit boss and two floor persons, job categories that the parties agreed to exclude from the unit, made statements indicating their support for the Petitioner and advising dealers to vote for the Petitioner in the election. The types of statements allegedly made generally expressed the speakers' views that a union was necessary and that the Petitioner would be effective in preventing or limiting some of the Employer's practices with which employees were concerned.

The Board has held that, while supervisory participation in organizational activity may have an effect on employee sentiment as to representation, the possible coercive effects of supervisory involvement are mitigated if employees are aware of the employer's opposition to the union. *Fall River Savings Bank*, 246 NLRB 831, 832. In this case the Employer distributed numerous pieces of campaign literature and held meetings with unit employees at which it made known its opposition to the Union through higher management representatives than the floor persons and pit bosses whose conduct is described above. Accordingly, I find that Objection 7 lacks merit and I will recommend that it be overruled.